

Internal Revenue Service  
**memorandum**

CC:TL-8915-90  
Br. 4:CBBurnett

date: AUG 10 1990

to: District Counsel  
Philadelphia

from: Assistant Chief Counsel (Tax Litigation) CC:TL:Br4

---

subject:

Allocation of Interest and Taxes per I.R.C. 280A

This is in response to your formal tax litigation advice request relating to the method of allocating interest and real estate taxes under I.R.C. § 280A between personal and nonpersonal uses of rental property.

ISSUE

Whether for purposes of computing an I.R.C. § 280A(c)(5)(b) deduction in the rental use of a vacation home, the proper formula for allocating allowable expenses (specifically interest and property taxes) between rental and nonrental use should be based on the ratio of the number of days the property was rented to the number of days the property is used.

DISCUSSION

Proposed Treasury Regulation Section 1.280A-3(d) states the Service's position that the appropriate formula for allocating interest and property taxes is the same as that used in § 280A(e) for allocating maintenance expenses; that is, the number of days rented to the number of days actually used. As you have suggested, taxpayers on the other hand, have allocated the interest and property taxes based on the ratio of number of days rented to total number of days in the year. Although the taxpayers' allocation results in a lower deduction from rental income, the balance of these expenses usually can be deducted against other income under other Code provisions. Taxpayers can offset more of the rental income with allocated maintenance expenses. Thus, the overall net effect to taxpayers is an increase in deductions.

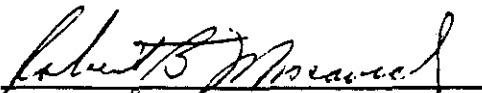
The proper method of allocating interest and property taxes was first considered by the Tax Court in Bolton v. Commissioner, 77 T.C. 104 (1981), aff'd, 694 F.2d 556 (9th Cir. 1983). The Tax Court found, and the Ninth Circuit affirmed, that the allocation must be based on a ratio of number of days rented to the number of days in the year.

09319

On the same day that the Tax Court decided the Bolton case, it handed down a supplemental decision in a separate case which involved the same issue, McKinney v. Commissioner, T.C. Memo. 1981-377, modifying T.C. Memo. 1981-181, aff'd, 732 F.2d 414 (10th Cir. 1983). In McKinney, the court again stated that the proper allocation formula for allocating interest and property taxes is based on the number of days rented to the number of days in the year. This decision was appealed to the Tenth Circuit where the court favorably cited the Ninth Circuit's decision in Bolton.

Because of the adverse decisions in the Tax Court and in the Ninth and Tenth Circuits, and because the regulation upon which the Service's position is based has not been finalized, we suggest you do not pursue this matter at this time. Simultaneous with this memorandum, we are writing to the Assistant Chief Counsel (Technical) Income Tax & Accounting to suggest that the § 280A allocations and Proposed Treas. Reg. 1.280A-3(d) be given further consideration in light of the Bolton and McKinney decisions.

MARLENE GROSS  
Assistant Chief Counsel  
(Tax Litigation)

By:   
ROBERT B. MISCAVICH  
Senior Technician Reviewer  
Branch No. 4  
Tax Litigation Division